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CONSTITUTIONAL ASSEMBLY

**THEME COMMITTEE 2
STRUCTURE OF GOVERNMENT**

**THURSDAY
02 FEBRUARY 1995
14H00 - 18H30
M46**

DOCUMENTATION

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CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 2 STRUCTURE OF GOVERNMENT

THEME COMMITTEE MEETING

Please note that a meeting of the above Committee will be held as indicated below:

Date : Thursday 2 February 1995

Time : 14h00 - 18H30

Venue : M46

AGENDA

1. Opening and Welcome
 2. Theme Committee Minutes (31 January 1995)
 3. Separation of Powers Report (block 1)
 4. Community Liaison Programme
 6. General
-

**HASSEN EBRAHIM
EXECUTIVE DIRECTOR
CONSTITUTIONAL ASSEMBLY**

Enquiries: James Nene & Thomas Smit 403 2281)

CONSTITUTIONAL ASSEMBLY
THEME COMMITTEE 2
MINUTES OF COMMITTEE MEETING
TUESDAY 31 JANUARY 1995
14H00
M46

PRESENT

Rabie JA (chairperson)

Ackerman C
Beyers AS
Bester BC
Diale N
Ebrahim AG
Eglin CW
Foster JA
Groenewald PH
Hendrickse PAC (Alt)
Holomisa SP
Lebona HJP (Alt)
Louw SK

Mabudafasi J
Mahlangu JL (Alt)
Mahlangu MJ
Mars I
Mlangeni A
Mohlamonyane GM (Alt)
Moloto CP (Alt)
Mothoagae PK (Alt)
Mutsila I
Mwedamutsu MJ
Ndlovu VB
Odendaal WA (Alt)
Olifant DAA
Pahad EGH
Phakathi NE (Alt)
Sethema BEE
Shabangu S
Steenkamp PJ
Taunyane DP (Alt)
Tolo LJ

APOLOGIES

Biyela BP
Maduna P
Mushwana GM

ABSENT

Doidge GQ
Jana DPS
Ligege MG
Marshoff FB
Msomi MD
Nxumalo SDW
Tyobeka M

Mngadi-Kgosidintsi T, Nene J, and Smit T, were in attendance

- 1. OPENING AND WELCOME**
- 1.1. The meeting was opened by Rabie JA.**
- 2. THEME COMMITTEE MINUTES**

- 2.1. The minutes of the previous meeting were approved, subject to the following corrections:
- (i) on p 5 (in documentation pack) a typographical error occurred in that Roman numerals (xi) were repeated;
 - (ii) substitute p 7, African National Congress, item (ii) with:
"A Senate may be necessary, however the issue of bicameralism requires discussion as a point of departure..."

3. FIRST REVISION OF THE WORK PLAN

- 3.1. The meeting agreed that the additional details in respect of the blocks of TC 2 contained in the revision may be useful. However, it was agreed that
- (i) Block 3 (Functioning of national and provincial structures of government) forms an integral part of block 2 (Structures of government); and,
 - (ii) The block relating to Traditional Authorities shall precede the block relating to Volkstaat and community selfdetermination.

4. SUBMISSIONS: SEPARATION OF POWERS

- 4.1. The PAC presented its submission, and submitted a further document used as the basis for its presentation:

4.2. PAN AFRICANIST CONGRESS

4.2.1. *SEPARATION OF POWERS BETWEEN LEGISLATURE, EXECUTIVE, AND JUDICIARY*

The PAC also confirmed their agreement with the general notion of Separation of Powers.

4.2.2. *BROAD OUTLINE OF CONSTITUTIONAL CHECKS AND BALANCES TO ENSURE ACCOUNTABILITY, RESPONSIVENESS AND OPENNESS*

and

BROAD OUTLINE OF THE STRUCTURES NEEDED FOR THE EXERCISE OF LEGISLATIVE AND EXECUTIVE POWER AT NATIONAL, PROVINCIAL AND LOCAL LEVEL

- (i) The objective of separation of powers shall be to ensure democratic

- practice and to avoid abuse of power and not to render instruments of governance ineffective;
- (ii) Elections seek a mandate to govern under a set of rules or policies and consequently democratically elected representatives must be allowed to carry out that mandate;
 - (iii) Enforced coalition is opposed, particularly its enshrinement in the constitution; the government of national unity may be supported in principle, because it evolved out of voluntary negotiations;
 - (iv) The role of the Senate shall be largely confined to looking after the interests of the provinces;
 - (v) Due to experiences elsewhere in Africa the issue of a ceremonial, above-politics State President or an Executive President shall be carefully examined; such separation has led to conflict - the Namibian or Tanzanian models may be preferred;
 - (vi) An executive President shall come from the ranks of elected representatives and be elected and be accountable to Parliament;
 - (vii) There shall be an independent judiciary;
 - (viii) Members of the National Assembly should be elected; and,
 - (ix) Checks and Balances generally, the relationship between legislature and executive, and the relationship of the legislature and the executive vis-a-vis the judiciary - are more fully detailed in the PAC submission contained in the submissions pack of 30 January 1995.

4.3. It was noted that submissions were received from all parties, and that all parties had an opportunity to present their documents. It was further noted that the Secretariat had been advised that the ACDP stood by its submissions document, and the ANC, FF, DP, IFP, NP, and PAC presented their document orally.

4.4. The meeting noted that it needed to report on contentious and non-contentious issues, and suggested approaches. As a starting point, and in consideration of the management role of the Core Group as envisaged by the Constitutional Committee, the meeting mandated the Core Group as follows: to draft a report on issues in respect of block 1, in respect of which consensus may be reached.

4.5. It was noted that the Core Group may be unable to complete this task for the following day. Therefore it was decided to ~~cancel~~ the Theme Committee meeting scheduled for Wednesday, 31 January 1995, and re-convene as a full committee on Thursday 2 February 1995.

5. ANY OTHER BUSINESS

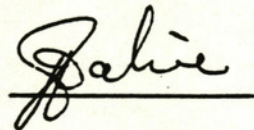
8.1. A report was given by the Secretariat that Technical Experts have been appointed by decision of the Constitutional Committee have

- 8.1. A report was given by the Secretariat that Technical Experts have been appointed by decision of the Constitutional Committee have been appointed by decision of the Constitutional Committee.
- 8.2. The meeting noted that advertisements requesting submissions in respect of block 2 (and 3) should appear in the media as a matter of urgency.

9. CLOSURE

- 9.1. The meeting rose at 15h40.

Signed by Chairperson

A handwritten signature in cursive script, appearing to read "J. Salvi", written over a horizontal line.

DRAFT REPORT OF CORE GROUP ON THE SUBJECT "SEPARATION OF POWERS" (Block 1).

1. INTRODUCTION

- 1.1 The Theme Committee 2 by 30 January 1995 had received submissions from the following parties, organisations and individuals.

PARTY SUBMISSIONS

ACDP
ANC
DP
FF
IFP
NP
PAC

ORGANISATION SUBMISSIONS:

ANCC
EFSA
ODISA

INDIVIDUAL SUBMISSIONS:

Bothma, O
Brijraj, R
Carser, A
Dimba, MS
Gottschalk, K
Stratten P & N

- 1.2. The constitutional Principle to which the Constitutional Assembly is required to give effect to in the new Constitutional Text is the following:

VI

"There shall be separation of powers between the legislature, executive and judiciary, with appropriate checks and balances to ensure accountability, responsiveness and openness."

- 1.3. It was understandable that many submissions on the "Separation of Powers" also focused on aspects of the "Structure of Government" which is the next subject for detailed information-gathering and report by Theme Committee 2. The Theme Committee will not report on this latter aspect of the submissions at this stage but will confine its report to the issue of "Separation of Powers".

2. AREAS OF AGREEMENT

All parties represented in the Constitutional Assembly are in agreement on the following issues:

2.1. SEPERATION OF POWERS

- 2.1.1. There was general agreement in the submissions that the new Constitution must contain specific provisions in which the separate legislative, executive and judicial powers are vested.

2.2. LEGISLATURE

- 2.2.1 There should be a parliamentary form of government.

- 2.2.2 The legislative authority should vest in Parliament.

- 2.2.3 The Legislative authority of the Republic shall, subject to the Constitution, vest in Parliament, which shall have the Supreme power to make laws for the Republic.

2.3. EXECUTIVE

- 2.2.1 The executive authority should vest in the President, who shall also be head of state, assisted by a Cabinet of a Prime Minister / Deputy President and a Cabinet, in which case the President would only be Head of State.

2.2.2 The executive shall be accountable to Parliament.

2.2.3 Cabinet Ministers shall be accountable individually and jointly to the Head of Government and Parliament.

3. JUDICIARY

3.1 There shall be an independent, impartial judiciary, subject to the Constitution.

3.2 There shall be an independent Constitutional Court with the powers to nullify any Act of Parliament if such Act is in conflict with the Constitution.

4. CHECKS AND BALANCES

4.1. There shall be checks and balances that will restrain each branch of government. (Checks and balances to be revisited under block 2 and 3)

Signed by Chairperson _____

WORK PROGRAMME

PART TWO :

COMMUNITY LIAISON PROGRAMME

DRAFT PUBLIC PARTICIPATION PROGRAMME

COMMUNITY LIAISON

MISSION STATEMENT :

“To facilitate an interface or dialogue between the South African people and their elected representatives by consulting the population at various levels and at various stages of the process of constitution making.”

(CA Resolution of 31 October 1994)

INTRODUCTION

On 31 October 1994 the Constitutional Assembly adopted a document entitled “Public Participation - A Strategic Overview” which set out the broad framework within which the community liaison programme will take place.

1. GUIDING PRINCIPLES

- Transparency
- Credibility
- Legitimacy
- Consultation
- Inclusivity

2. OBJECTIVES OF PUBLIC PARTICIPATION PROGRAMME (PPP) :

(Extracted from Constitutional Assembly Resolutions, 5 September 1994)

- ensure that the draft constitution enjoys the support and allegiance of all South Africans
- new constitution should represent the aspirations of all our people
- process should serve to unite the country's people and produce a constitution which will become the cornerstone of the future South Africa. It should be people driven and transparent
- new constitution must be the product of an integration of ideas of all role players. In this regard, there should be maximum public participation
- there should be an effective strategy for media and community liaison
- media and public participation strategies should aim at facilitating the required “dialogue” and channels of communication between the broader public and their elected representatives
- programmes of the Constitutional Assembly should be “non-party political”. Strict monitoring should ensure that the programmes promote the Constitutional Assembly and the interests of the country as a whole

3. **COMMUNICATION OBJECTIVES**

- Develop, raise and popularise the CA profile
- Solicit views and submissions
- Brief public - on the constitution making process
- procedure for submissions to CA
- Consult all sectors and role players
- Increase public interest and awareness through constitutional education
- General involvement and engagement of public at large

4. **PROGRAMMES**

- Special Events
 - Launch Briefings
 - Other Special Events
- Theme Committee Requests
 - Hearings
 - Seminars
- Constitutional Public Meetings (CPMs)
- Constitutional Education Programme (CEP)

5. **TIME FRAMES**

It is envisaged that the CLP will be run in two phases;

- First Phase : Develop draft constitution - February 1995 to end of July 1995
- Second Phase : Popularising the draft constitution - August 1995 to May 1996

This document deals with detailed planning for February 1995.

LIST OF ABBREVIATIONS

| | |
|--|--|
| PPP : Public Participation Programme | PMT : Project Management Team |
| CL : Community Liaison | SACS : South African Communication Service |
| CLP : Community Liaison Programme | TC : Theme Committee |
| CPM : Constitutional Public Meetings | NGO : Non Governmental Organisation |
| CEP : Constitutional Education Programme | CBO : Community Based Organisation |

COMMUNITY LIAISON PROGRAMME : FEBRUARY 1995

6. SPECIAL EVENTS

6.A. LAUNCH BRIEFINGS

6.A.1. Introduction

It is proposed that the CA Chairpersons - Messrs Cyril Ramaphosa and Leon Wessels - should visit three provinces - namely the Western Cape, Northern Cape and Gauteng, in order to launch the CLP. Briefings in the other provinces are envisaged in the months to come. Briefings will also be used in the second phase of the constitution making process.

6.A.2. Objective

To develop, raise and popularise the CA profile.

6.A.3. Process

Three briefings are envisaged to launch the Community Liaison Programme (CLP). The briefings used to nationally launch the CLP should be of high profile to attract maximum media coverage.

6.A.4. Proposed Briefings

First briefing

| | | |
|--------------|---|----------------------------|
| Date | : | First week in February |
| Area | : | Western Cape (Boland) |
| Target group | : | Farmworkers and management |

Second briefing

| | | |
|--------------|---|-------------------------|
| Date | : | Second week in February |
| Area | : | Northern Cape (Kuboes) |
| Target group | : | Rural community |

Third briefing

| | | |
|--------------|---|------------------------|
| Date | : | Third week in February |
| Area | : | Gauteng |
| Target group | : | Urban community |

Structure

- CA participants : Mr Cyril Ramaphosa (Chairperson CA)
Mr Leon Wessels (Deputy Chairperson CA)
Representatives from all political parties in the CA
- Chair : It is proposed that the Provincial Premier or a Provincial MEC should chair the meeting.
- Content of meeting : Duration: 1 hour:
Brief: 30 minutes
Questions: 30 minutes

Programme:

The programme will consist of a briefing on the Constitutional Process by the CA Chairs. It is expected, through these briefings, that:

- public participation will be encouraged;
- public awareness will be increased;
- the role of the CA in directing public participation is highlighted.

It is inevitable that questions from the audience will arise. Opportunity - though limited - should be given for questions to be posed to the Chairs.

Media:

Since these briefings serve as the launch of the CLP, time should be allowed for media interviews, if requested. Close co-operation with the Media Department is of utmost importance.

6.A.5. Resources

Given the time constraints, resources such as exhibitions, pamphlets, T-shirts cannot be fully utilised for the first three proposed briefings. The Media Department is requested to arrange posters and pamphlets.

6.A.6. Evaluation / monitoring

To determine the success of the first three briefings, and to set guidelines for future briefings, evaluation is important and will be dealt with as follows:

- Tape recording of the briefing;
- Monitoring the media response;
- Report back from the Chairs;
- Members of the CL team will attend the briefings to evaluate and monitor evaluation thereof

6.B OTHER SPECIAL EVENTS

Further special events proposed include:

- A simulated Constitutional Assembly process for high school pupils;
- Human rights debates for high school pupils;
- Mock Constitutional Court cases for high school pupils and university law students.

7. *THEME COMMITTEE REQUESTS*

7.A *HEARINGS*

7.A.1. Introduction

Theme Committees will require specialist submissions on issues from target groups. Thus target groups will be invited to hearings to give views on required issues. The need for these hearings is subject to input from the TCs.

7.A.2. Objective

To solicit views and submissions.

7.A.3. Process

Community Liaison (CL) proposes single hearings where there is an overlap between different Theme Committees (TCs).

Schedule of Hearings

| Date | Target Groups |
|-----------------|----------------------------|
| February | Business |
| March | Women |
| April | Traditional Leaders |
| May | Labour |
| June | Religious Groups |

All Theme Committees are free to indicate to CL which hearings they would like to attend.

Theme Committee requests

CL will draft a standard request form to be used by Theme Committees.

CL requires reasonable notice from TCs, taking into account:

- capacity of CL;
- availability of sectors who will need time to consult with their constituencies.

7.A.4. Resources

Background information packages eg press cuttings.

7.A.5. Evaluation/Monitoring

Managing Secretaries will evaluate the hearings and submit a report to CL.

7.B SEMINARS

It is proposed to hold seminars in order to brief Theme Committees on constitutional issues following the work programme. It is proposed that universities, technikons and other institutions be approached to convene specialist seminars on issues discussed by the TCs. The seminar programme will respond to the needs of the TCs and will be guided by the Law Advisers. Because of the ad hoc nature of this section of the programme all TC requests would need to be properly co-ordinated in conjunction with the Management Committee.

8. CONSTITUTIONAL PUBLIC MEETINGS (CPMs)

8.1. Introduction

To involve and engage the public at large, Constitutional Public Meetings (CPMs) will be held throughout the country. The public will have direct access to their elected representatives and will be invited to give individual submissions.

8.2. Objective

To involve and engage the public at large.

8.3. Process

February will be used as the pilot phase of the Community Liaison Programme. It is proposed that teams from the same TC will attend particular CPMs, and that a team should comprise up to ten people, with at least one person from each party.

*Proposed CPMs**Free State*

Target date : February 18
 Venue : Mangaung

Eastern Cape

Target date : February 18
 Venue : Grahamstown

Eastern Transvaal

Target date : February 18
 Venue : Drum Rock

Western Cape

Target date : February 18
 Venue : Worcester

Northern Cape

Target date : February 25
 Venue : Kimberley

KwaZulu - Natal

Target date : February 25
 Venue : Kwa-Mashu

North West

Target date : February 25
 Venue : Klerksdorp

Gauteng

Target date : February 25
 Venue : Duduza

Northern Transvaal

Target date : February 25
 Venue : Namakgale

Note: The issues to be addressed in particular CPMs will be determined on the basis of the work programme and will be guided by the Law Advisers.

8.4. Theme Committee Commitments

Three options as to how TC members will attend future CPMs are proposed (for logistical reasons, operational from March 1995). TC members are requested to decide on the most feasible option available, taking into account the objectives of the PPP as outlined by the Resolutions of the CA..

Option 1

| | | |
|--------------|---|--|
| Working days | : | Saturdays & Sundays |
| Who | : | The 6 TCs divided into 2 groups = 12 groups |
| | : | Group 1: Saturday & Sunday mornings : 2 meetings per group per weekend |
| | : | Group 2: Saturday & Sunday afternoons : 2 meetings per group per weekend |
| CPMs | : | 24 |
| Total CPMs | : | 24 x 18 (available weekends till 30 June 1995) = 432 |

Option 2

| | | |
|--------------|---|---|
| Working days | : | Saturdays only : mornings & afternoons |
| Who | : | The 6 TCs |
| CPMs | : | 12 : 6 TC groups x 2 meetings per day |
| Total CPMs | : | 12 x 18 (weekends available till end of June 1995) = 216 |

Option 3

| | | |
|--------------|---|--|
| Working days | : | Every second Saturday |
| Who | : | The 6 TCs, alternating |
| CPMs | : | 6 (6 meetings per weekend) |
| Total CPMs | : | 6 x 18 weekends = 108 CPMs during PPP |

8.5. Proposed structure of the CPMs

| | | | |
|--------------------------|---|-------------------------------|----------|
| Duration | : | 3 hours | |
| Welcome | : | Host | : 10min |
| Introduction | : | Facilitator | : 10min |
| Input | : | | : 45min |
| | - | Constitution Making Process | |
| | - | Specific TC issues | |
| | - | Issues discussed by other TCs | |
| Questions and Discussion | : | | : 105min |
| Closure | : | | : 10min |

TC members will be provided with a brief, compiled by CL and Law Advisers, before each CPM, giving details of current issues in each TC. These issues will be drawn from the Work Programme.

Please note: Due to translation and other factors, time allocated could be extended.

Appointment of Chairperson

It is proposed that :

- criteria for the selection of the chairperson be established by CL.
- chairperson should be neutral and identified from the community.
- the national Community Liaison Team should have veto power on the appointment of the chairperson.

Facilitator:

It is proposed that the facilitator should introduce the constitution making process and facilitate the making of submissions.

8.6 Proposed role of the Secretariat

It is proposed that the Managing/Minute Secretaries be involved in two levels of the Constitutional Public Meeting :

- during the CPM
 - take minutes of meeting and receive written submission
 - record meetings
 - collect evaluation forms from facilitator to return to CL
- after the CPM
 - take evaluation forms to Deputy Assistant Director : Community Liaison

8.7 Evaluation of CPMs

The following people are suggested to be evaluators: CA members, facilitators, provincial coordinators (CEP), national community liaison officers, random audiences and community leaders. Areas of evaluation will include process, content and promotional material.

9. CONSTITUTIONAL EDUCATION PROGRAMME (CEP)

9.1. Introduction

The Constitutional Assembly Work Programme for 1995 articulated the objectives of the Constitutional Education Programme as follows:

"The Constitutional Assembly, in association with a wide variety of NGOs, CBOs and other sectors of South African society, will conduct a wide ranging programme of constitutional education that will be accessible to South Africans at all levels. The programme will include South Africans in the constitution-making process by providing training on the key issues of constitutionality and briefing them on developments within the Constitutional Assembly. The assistance of NGOs and CBOs will allow this programme to reach disadvantaged communities, inaccessible or 'invisible' sectors and rural communities."

On 2 December 1994 the Constitutional Committee approved the programme and requested further information. Such information is detailed below.

9.2. Objectives

The Constitutional Education Programme has the following objectives:

- * helping to ensure maximum community participation in the constitution-making process, primarily through community workshops;
- * ensuring that the Constitutional Education Programme is in step with the different phases of the constitution-making process. In the first phase this will require a Constitutional Education Programme grounded in the workplan of the Theme Committees.

9.3. Process

The primary mechanism of delivery for this programme is the use of community workshop, so as to educate communities on the constitution-making process and to empower them to make submissions. Community workshops will be run, where possible, prior to Constitutional Public Meetings as well as independently of these meetings. This programme would continue into the second phase of the constitution-making process (the consideration of the draft constitution) and will lay the foundation for a wide-reaching public education programme which could be utilised in the development of a human rights culture.

Short-term implementation:

A short-term programme has been developed for February:

- Convening a national consultative meeting to be held in Cape Town, provisionally scheduled for 9/10 February, to provide NGOs and CBOs with a briefing and to assess existing resources;
- Running two pilot workshops in conjunction with NGOs, on Sunday 19 February and Sunday 26 February, at venues still to be finalised.

9.4. Training and Resource Development**Training:**

This will encompass the training and briefing of co-ordinators and workshop facilitators from the CA, SACS and NGOs.

Resources:

A wide range of resources are envisaged, in order to ensure that the constitution-making process is accessible to as many sectors and constituencies as possible. The use of simple language, translation, drama and visual materials will be essential components of these resources. A workshop kit will be developed in conjunction with the NGO sector, including resources such as:

- an educational booklet on how to participate in the constitutional process;
- a looseleaf constitutional education manual (allowing for updates);
- outlines for community workshops;
- educational/information posters, including CA promotional material for use in local community venues such as advice offices and municipal offices.

9.5. Evaluation and Reporting Mechanisms

Mechanisms will be developed to assess the overall implementation and impact of the programme, including feedback from workshops and the effectiveness of resources.

Regular reports will be made to the Management Committee and close ~~liaison~~ liaison maintained with the Theme Committees.

10. CONCLUSION

It is proposed that detailed project planning be submitted to the Directorate: CA Administration and the Management Committee on a monthly basis. Planning should reach the Management Committee not later than the second meeting of the preceding month.